

**United States Department of the Interior
U.S. Fish and Wildlife Service
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AESO/FA

May 11, 2000

Mr. Bruce Henderson
Project Manager
U.S. Army Corps of Engineers
Los Angeles District
Ventura Field Office
2151 Alessandro Drive, Suite 255
Ventura, California 93000

Dear Mr. Henderson:

We have received and reviewed Public Notice (PN) 98-50449-BAH for establishment of regional conditions for Nationwide Permits (NWP) dated April 21, 2000. The PN was intended to solicit comments on proposed regional conditions in the Los Angeles District, which includes the State of Arizona. Our primary concern is that the regional conditions proposed in the PN will not be adequate to ensure minimal individual and/or cumulative adverse effects on the environment in accordance with Section 404(e)(1) of the Clean Water Act.

The PN states that discussions on establishing standard local operating procedures for endangered species (SLOPES) have been and will be conducted with the Service, and that the Corps is hereby requesting we suggest additional species specific regional conditions for listed species. To date, very little coordination between the Corps and Service regarding the development of SLOPES for Arizona has transpired. Please be aware that we are interested in cooperatively developing SLOPES as well as watershed, stream, and species specific regional conditions for Arizona. We are very concerned with the impact of the NWP program on Arizona's natural resources including, but not limited to, threatened and endangered species, designated critical habitat, wetlands, cottonwood/willow gallery forests, ironwood forests, and the Sonoran desert environment. However, based on past permit actions, we foresee significant differences of opinions on these issues. Therefore, we suggest that developing and agreeing to SLOPES between our respective agencies would significantly improve coordination and resource conservation objectives.

Our respective agencies have had a long standing disagreement regarding the scope of impact analysis for Section 404 permitted activities and associated individual and cumulative effects. Until these issues are adequately resolved, we do not believe the development of watershed, stream, or species specific regional conditions or SLOPES will be adequate to protect the sensitive ecosystems and species of Arizona. We realize that resolution of this issue may not be

an immediately attainable goal. Therefore, until this issue is resolved and we are able to cooperatively craft adequate watershed, stream, and species specific regional conditions, we request interim adoption of the following regional condition for the NWP program.

In the State of Arizona, for all activities requiring notification to the District Engineer (DE), the DE will, upon receipt of notification, provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner), a copy to the Arizona Ecological Services Field Office of the U.S. Fish and Wildlife Service and other appropriate resource agencies. Consistent with General Condition 13 of the Final Notice of Issuance and Modification of Nationwide Permits (65 FR 12818-12898), these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the DE notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the DE will wait an additional 15 calendar days before making a decision on the notification.

We believe interim adoption of this regional condition is necessary to ensure that we are provided the proper opportunity to inform the DE of instances when we believe an activity to be authorized by a NWP would have more than individual and/or cumulative adverse effects on the environment or adversely affect threatened and endangered species or designated critical habitat. If you have any questions or concerns, please contact Don Metz (x217) or Mike Martinez (x224) of this office.

Sincerely,

/s/ David L. Harlow
Field Supervisor

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (PARD-ES, GARD-AZ/NM)
Chief, Division of Endangered Species, Arlington, VA (Attn: Mike Horton)
District Engineer, U.S. Army Corps of Engineers, Los Angeles, CA
Chief, Regulatory Branch, U.S. Army Corps of Engineers, Phoenix, AZ
Regional Administrator, Environmental Protection Agency, San Francisco, CA
Supervisor, Project Evaluation Program, Arizona Game and Fish Department, Phoenix, AZ
401/404 Permit Certification, Arizona Department of Environmental Quality, AZ